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Attorney for Plaintiffs  
Nolan Wai-Yip DUONG,  
and Amber Yi SHAO

E-filing

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Nolan Wai-Yip DUONG,  
and Amber Yi SHAO

Plaintiffs

vs.

MICHAEL CHERTOFF, Secretary of the  
Department of Homeland Security;  
ROBERT S. MUELLER, Director of Federal  
Bureau of Investigation

Defendants.

Case No.:

**COMPLAINT FOR WRIT IN THE  
NATURE OF MANDAMUS**

"Immigration Case"

Plaintiffs Nolan Wai-Yip DUONG and Amber Yi SHAO, aka Amber SHAO, by and  
through their undersigned attorney, sue Defendants and states as follows:

1. This action is brought against the Defendants to compel action on the Petition for  
Alien Relative, or Form I-130, filed by Plaintiff Nolan Wai-Yip DUONG, U.S. citizen, on behalf of  
his alien wife, Plaintiff Amber SHAO, and on the application to Adjust to Permanent Resident Status,  
or Form I-485, by Plaintiff Amber SHAO, based on Plaintiff Amber SHAO's marriage to Plaintiff  
Nolan Wai-Yip DUONG, properly filed by the Plaintiffs. The I-130 petition and I-485 application  
remain within the jurisdiction of the Defendants, who have improperly withheld action on said  
applications to Plaintiffs' detriments.

**PARTIES**

2. Plaintiff Nolan Wai-Yip DUONG is a native of Vietnam and a citizen of the United  
States. He filed a Form I-130, Petition for Alien Relative, on December 12, 2003 on behalf of

1 Plaintiff Amber SHAO, his alien wife (**Exhibit 1: Notice of Receipt**). Plaintiff Amber SHAO is  
2 a native and citizen of the People's Republic of China. Her Form I-485, Application to Register  
3 Permanent Resident or Adjust Status was received by the U.S.C.I.S. San Francisco District Office  
4 on December 12, 2003 (**Exhibit 1: Notice of Receipt**) and is seeking to become lawful permanent  
5 resident of the United States as beneficiary of the Form I-130 petition filed by Plaintiff Nolan  
6 Wai-Yip DUONG.

7 3. Defendant Michael Chertoff is the Secretary of the Department of Homeland Security  
8 (DHS), and this action is brought against him in his official capacity. He is generally charged  
9 with enforcement of the Immigration and Nationality Act, and is further authorized to delegate  
10 such powers and authority to subordinate employees of the DHS 8 U.S.C. 1103(a); 8 C.F.R. 2.1.

11 4. Defendant Robert S. Mueller, III, is Director of the Federal Bureau of Investigations (FBI),  
12 the law enforcement agency that conducts security clearances for other U.S. government agencies,  
13 such as the Department of State. As will be shown, Defendant has failed to complete the security  
14 clearances on Plaintiff's case.

#### 15 JURISDICTION

16 5. Jurisdiction in this case is proper under 28 USC §§1331 and 1361, 5 USC §701 *et seq.*,  
17 and 28 USC §2201 *et seq.* Relief is requested pursuant to said statutes.

#### 18 VENUE

19 6. Venue is proper in this court, pursuant to 28 USC §1391(e), in that this is an action  
20 against officers and agencies of the United States in their official capacities, brought in the  
21 District where the Plaintiffs reside if no real property is involved in the action.

#### 22 EXHAUSTION OF REMEDIES

23 7. Plaintiffs have exhausted their administrative remedies.

#### 24 CAUSE OF ACTION

25 8. Plaintiff Nolan Wai-Yip DUONG is a native of Vietnam and a citizen of the United States.  
26 He filed a Form I-130, Petition for Alien Relative, on behalf of Plaintiff Amber SHAO, his alien  
27 wife. Plaintiff Amber SHAO is a native and citizen of the People's Republic of China. Her Form  
28 I-485, Application to Register Permanent Resident or Adjust Status was received by the U.S.C.I.S.

1 San Francisco District Office on December 12, 2003 (**Exhibit 1: Notice of Receipt**), and  
2 Plaintiffs Nolan Wai-Yip DUONG and Amber SHAO also had their interview on June 2, 2004 at  
3 the San Francisco District Office and was informed on the date of the interview that their case was  
4 pending security clearance (**Exhibit 2: Letter from CIS**).

5 9. According to the Service Center processing dates, the USCIS San Francisco Office is  
6 currently processing I-485 adjustment application filed on November 13, 2006 (**Exhibit 3: Copy**  
7 **of San Francisco CA Processing Dates Posted on May 21, 2007**). Plaintiff Nolan Wai-Yip  
8 DUONG's I-130 and Plaintiff Amber SHAO's I-485 application have now remained pending for  
9 almost 42 months from the date of the filing.

10 10. Defendants' refusal to act in this case is, as a matter of law, arbitrary and not in accordance  
11 with the law. Defendants unreasonably have delayed in and have refused to adjudicate Plaintiff's  
12 I-485 application for almost 42 months from the date of filing, thereby depriving them of the  
13 rights to the decision on their applications and the peace of mind to which Plaintiffs are entitled.

14 11. Plaintiffs have been damaged by the failure of Defendants to act in accord with their duties  
15 under the law.

16 (a) Plaintiff Nolan Wai-Yip DUONG has been damaged by simply being deprived of  
17 the adjudication of his Form I-130, Petition for Alien Relative, for almost 42  
18 months.

19 (b) Plaintiff Amber SHAO has been damaged by simply being deprived of the  
20 adjudication of her Application to Adjust to Permanent Resident Status for almost  
21 42 months. Plaintiff has also been unable to plan any foreign travel or pursue a  
22 future course of action in the United States due to the pendency of her I-485  
23 application.

24 (c) Plaintiff Amber SHAO has been damaged in that her employment authorization is  
25 tied to her status as applicant for permanent residency, and is limited to increments  
26 not to exceed one year. 8 CFR §274a.12(c)(9). Therefore, Plaintiff has been forced  
27 to repeatedly apply and pay for extensions of employment authorization—three  
28 times so far—to the continued inconvenience and harassment of Plaintiff to

continually insure her work eligibility.

- (d) Plaintiff Amber SHAO has been further damaged in that her naturalization application, for which she is eligible to apply three years after she receives her Permanent Resident status, has now been delayed due to the pendency of her I-485 application.

12. The Defendants, in violation of the Administrative Procedures Act and Mandamus Act, 5 USC §701 *et seq.*, are unlawfully withholding or unreasonably delaying action on Plaintiffs' I-485 applications and have failed to carry out the adjudicative functions delegated to them by law with regard to Plaintiffs' cases.

### PRAYER

13. WHEREFORE, in view of the arguments and authority noted herein, Plaintiffs respectfully pray that the Defendants be cited to appear herein and that, upon due consideration, the Court enter an order:

(a) requiring Defendants to expeditiously complete Plaintiff Amber SHAO's FBI Security Check for her I-485 application, if security check is the only reason for the delay;

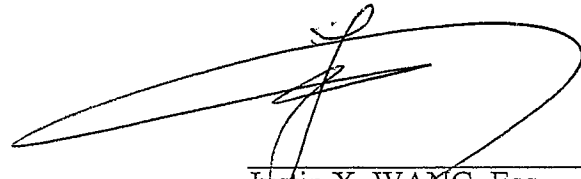
(b) requiring Defendants to expeditiously process Plaintiff's I-485 Application to conclusion;

(c) awarding Plaintiffs reasonable attorney's fees under the Equal Access to Justice Act; and

(d) granting such other relief at law and in equity as justice may require.

Dated: June 8, 2007

Respectfully submitted,



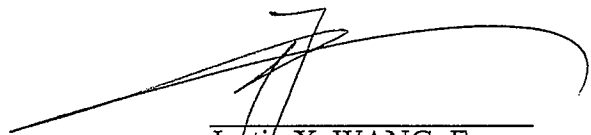
Justin X. WANG, Esq.  
Attorney for Plaintiff

**CERTIFICATION OF INTERESTED ENTITIES OR PERSON**

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Dated: June 8, 2007

Respectfully submitted,

  
Justin X. WANG, Esq.  
Attorney for Plaintiff

LIST OF ATTACHMENTS

<i>Exhibit</i>	<i>Description</i>
1	Notice of Receipt
2	Letter from CIS
3	Copy of San Francisco CA Processing Dates Posted on May 21, 2007

Ex. 1

U.S. Department of Homeland Security  
630 Sansome Street  
San Francisco, CA 94111



U.S. Citizenship  
and Immigration  
Services

## Notice of Receipt

Receipt # WAC0406451721

Date: 12/12/2003

A No: 96-397-811 / COA: CR6

Name: SHAO, AMBER

Address: 51 W. 4TH AVENUE #15  
SAN MATEO, CA 94402

*changed*  
→ 929 E. cardinal dr  
Sunnyvale, CA 94087

Your Form I-485 Application for Adjustment of Status has been received and accepted. Your interview appointment notice will be mailed to you separately. If you also applied for employment authorization and/or advance parole, notices for appearing to receive these benefits, if approved, are also enclosed.

**Please carefully review all of the other material enclosed. It may include requests for evidence and documentation you must bring with you to your interview on the date assigned. Failure to bring all requested evidence and documents to your adjustment of status interview could result in immediate denial of your adjustment application. DO NOT mail documents to this office unless advised to do so.**

**NOTICE: You must not depart the United States without written permission from the Service while your application is pending. If you depart without permission your application will be denied. You may apply for advance parole to re-enter the United States to continue processing your application.**

**ADVISORY:** If after April 1, 1997, you were unlawfully present in the United States for more than 180 days before filing for adjustment of status, you may be found inadmissible under Section 212(a)(9)(B)(I) of the Act when returning to the United States. If you are found inadmissible, you will need to qualify for a waiver of inadmissibility before your adjustment of status can be approved.

**CHANGE OF ADDRESS:** The change of address form included with this receipt is for your use to notify this office of any change of address. Please retain a copy for your records. Failure to notify this office in a timely manner of any change of address may result in denial of your applications for adjustment of status and employment authorization (EAD).

**For: David N. Still, District Director**

www.uscis.gov

DM Form 1 (12/04/03) other editions are obsolete and may no longer be used

USCIS BPO 375-5283



Ex. 2

U.S. Department of Homeland Security  
San Francisco, CA 94111



U.S. Citizenship  
and Immigration  
Services

*Amber yi Shao*

A 096 397 811

E-11(PENDING)

☒ HAND-DELIVERED to applicant

THIS LETTER IS IN REFERENCE TO YOUR APPLICATION FOR PERMANENT RESIDENCE.  
YOUR CASE HAS BEEN CONTINUED FOR THE REASON(S) CHECKED BELOW:

☐ Visa Availability ☐ Fingerprints ☒ Security Clearance(s) ☐ A-file(s) ☐ Further Review  
☐ Documentation (listed below) ☐ Other:

IT IS REQUESTED THAT YOU SUBMIT THE FOLLOWING DOCUMENTS:

YOU ARE ADVISED THAT YOU ARE GRANTED A PERIOD OF NINETY (90) DAYS FROM THE DATE  
OF THIS LETTER TO SUBMIT THE REQUESTED DOCUMENTS.

FAILURE TO COMPLY WITH THIS REQUEST WILL BE DEEMED GROUNDS FOR DENIAL OF YOUR  
APPLICATION FOR LACK OF PROSECUTION.

Sincerely,

*David N. Still*  
David N. Still  
District Director

*y* JUN - 2 2004

PLEASE SEND REQUESTED DOCUMENTS  
WITH A COPY OF THIS LETTER TO:

Citizenship and Immigration Service  
630 Sansome Street, AOS/245 UNIT  
San Francisco, CA 94111  
ATTN: E11 / PENDING

Ex.3

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## U.S. Citizenship and Immigration Services San Francisco CA Processing Dates Posted May 21, 2007

**Notice:** U.S. Citizenship and Immigration Services (USCIS) has improved the reporting procedure for processing times of immigration benefit applications. In the past, USCIS benefit processing reports indicated the specific type of applications or petitions that were being processed and the date the cases were received. However, the date the case was received did not provide a clear indication of when USCIS expected to complete the case, nor did it provide a clear indication of USCIS' commitment to process cases within a certain cycle time. It also did not align with the processing times and cycle times the agency reports in other contexts.

This improved reporting procedure is an effort to give our customers more accurate information that better reflects current processing time and USCIS service level commitments. Effective immediately, when we are completing applications and petitions within our service level goals we will report that as the processing time. For example, when our service level goal is to process a particular kind of case within six months, and if our processing time is six months or less, we will show a date consistent with our service level goal because that reflects our commitment.

When we are not meeting our service level goal, the date posted will reflect the filing date of cases that are being completed. It should be noted that while in some instances reported processing dates may appear to have regressed due to this change, they do not reflect a lengthening of USCIS processing times, but simply the change in reporting. Our goal is to provide accurate projections and thus give customers clear expectations as to what they can expect as a processing time.

### There are several important exceptions to the processing times shown below:

- Case processing will be delayed if we must ask you for more evidence or information. If we ask for missing required initial evidence, count the processing time from when we receive that missing evidence.
- The case processing timeframe will start over if a customer doesn't appear for an interview or asks that it be rescheduled.

### What if I have a problem or have questions about a case?

We offer a variety of services after you file. For example, for most kinds of cases you can [check the status of your case online](#).

For more information about when and how to contact us, whether your case is outside our processing time or if there are other issues, please see our fact sheet –

### [Case Services - How do I... know what kind of services are available to me after I file my application or petition?](#)

One additional point about these projections. They are the time to complete processing and mail the actual notice and/or document. If you check case status online and see that your case has been approved, and you haven't yet received your approval notice or document in the mail, we ask that you wait thirty days from the approval date before contacting us. That is because it may take that long before it is returned to us as undeliverable. You can also print the case status online answer

for your records.

District Office Processing Dates for **San Francisco CA** Posted May 21, 2007

Form	Form Name	Now Processing Cases with Receipt Notice Date of:
<b>I-131</b>	Application for Travel Documents	February 12, 2007
<b>I-485</b>	Application to Register Permanent Residence or Adjust Status	November 13, 2006
<b>I-600</b>	Petition to Classify Orphan as an Immediate Relative	February 09, 2007
<b>I-600A</b>	Application for Advance Processing of Orphan Petition	February 09, 2007
<b>I-765</b>	Application for Employment Authorization	February 26, 2007
<b>N-400</b>	Application for Naturalization	October 12, 2006
<b>N-600</b>	Application for Certification of Citizenship	February 12, 2007

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